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No. 88-____

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

VICKI FROST,

Petitioner,

v.

HAWKINS COUNTY BOARD OF EDUCATION, JEAN PRICE, JOE ASHBROOK, BILL B. SNODGRASS, CITY OF CHURCH HILL, TENNESSEE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JORDAN W. LORENCE*
CIMRON CAMPBELL
Concerned Women for America
370 L'Enfant Promenade SW
Suite 800
Washington, D.C. 20024
(202) 488-7000
**Counsel of Record*

WENDELL R. BIRD
Law Offices of Wendell R. Bird
1150 Monarch Plaza
3414 Peachtree Road NE
Atlanta, GA 30326
(404) 264-9400

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QUESTIONS PRESENTED

Vicki Frost was arrested and jailed when she requested exemption for her second grade daughter from certain required reading books on the basis of religious objections. Her petition raises the following questions:

1. May a public school refuse to exempt a student who, along with parents, raises sincere religious objections to certain required books in a reading class?

2. May a public school have a nondisruptive mother arrested on school property and jailed for peacefully stating to school officials her sincere religious objection to certain required books in a reading class and for petitioning for exemption of her daughter from those books?

3. May public schools expel children from all aspects of the public school curriculum, and thereby deny a public benefit, if they and their parents object on sincere religious grounds to one portion of the school curriculum?

4. Do public schools have a constitutional duty to provide reasonable education alternatives to accommodate the sincere religious objections of a few students and parents to specific curricular materials?

PARTIES

All parties are listed in the caption.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit, entered in this proceeding on July 12, 1988.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Sixth Circuit appears at 851 F.2d 822 (6th Cir. 1988). It appears in the appendix at 1a. The jury verdict appears at 16a. The federal district court issued no written opinion in this case.

JURISDICTION

This case seeks review of a decision of the U.S. Court of Appeals for the Sixth Circuit entered on July 12, 1988. This is a civil case.

Jurisdiction for review of this matter by certiorari is conferred on this Court by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are the First Amendment and the Fourteenth Amendment to the U.S. Constitution, 42 U.S.C. § 1983 and two Tennessee statutes, Tenn. Code Ann. § 49-818 (recodified as § 49-6-2008) and Tenn. Code Ann. § 39-3-1204. They appear in the Appendix at 18a.

STATEMENT OF THE FACTS

This is a First Amendment case involving the false arrest and false imprisonment of Vicki Frost because of her going onto school grounds to express her religious objection to certain textbooks to school officials and to petition for exemption of her daughter Sarah from objectionable texts. This case is related to but different from the well-publicized "Tennessee Textbook" controversy. *See Mozert* v. *Hawkins County Public Schools*, 647 F.Supp. 1194 (E.D.Tenn. 1986), *rev'd*, 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 108 S.Ct. 1029 (1988).

Vicki Frost was arrested and jailed when she requested exemption for her second grade daughter from certain required reading books on the basis of religious objections. A state trial judge dismissed all criminal charges against Mrs. Frost. In a subsequent federal court trial, a jury awarded Mrs. Frost $70,000 damages against the

school district for violating her constitutional rights. The Sixth Circuit Court of Appeals reversed the verdict.

A. Sincere Religious Objections And Exemption Request

In the fall of 1983, Vicki Frost, as a Christian parent in Hawkins County, Tennessee became concerned about the content of stories in a reading series used by the reading class in local public schools; the series was published by Holt, Rinehart and Winston (the "Holt reading books"). The parents complained to school officials that the Holt reading books were not limited to mere reading skills, but conveyed with implicit or explicit approval various ideological and religious themes that Mrs. Frost and her daughter found violated their religious beliefs. The religiously objectionable themes included occultism, secular humanism, evolution, disobedience to parents, feminism, and pacifism.

Mrs. Frost asked school officials to exempt her daughter from the religiously objectionable books and to accommodate their sincere religious beliefs. The parents suggested many alternatives, such as having the students sit in the library while the Holt reading books were used, having the children learn reading from different books, having the parents pay for an additional teacher for the school district to use different reading books, or having the parents home educate their children.

Defendants refused to exempt Sarah Frost from the religiously objectionable books. Although some of the principals did successfully provide alternative reading books and programs for the students, Principal Jean Price of Church Hill Elementary School refused to allow Sarah Frost to use alternative reading books. Mrs. Frost's two junior high children did receive and use alternative reading books.

B. Denial Of Exemption And Of Accommodation

Thereafter, the Hawkins County School Board voted unanimously to refuse to exempt any students from using the Holt reading books, on November 9, 1983. Mrs. Frost reiterated to Principal Jean Price her religious objections to the reading books. Sarah was allowed to sit alone in the classroom but was effectively forced to listen during reading class, and Mrs. Frost asked the school to remove her daughter from the classroom during reading because of their objection to being forced to listen to reading from the offensive books. Mrs. Frost offered to teach reading to Sarah during the times she was not in the classroom, but Principal Price advised Mrs. Frost that she would be in violation of the Tennessee truancy laws, which carry criminal penalties.

Mrs. Frost then went to Principal Price's office in order to ask to take Sarah out of the reading class, on November 21, 1983. Price, and some other school officials, said Sarah would not be exempted and must use the offensive textbook if she wanted to remain in public schools, and suggested that Mrs. Frost enroll Sarah in a Christian school. That day, Mrs. Frost was permitted to remove Sarah from the class. That evening, Price sought advice from the county attorney as to whether a certain state trespassing law applied to the situation.

On the next day, Mrs. Frost returned to remove Sarah from class. They were prohibited from remaining in the school cafeteria, and so went to Mrs. Frost's vehicle in the school parking lot. Shortly, thereafter Chief of Police Joe Ashbrook arrived to talk to Price, and then went to Mrs. Frost's vehicle to order her to leave the school grounds. Ashbrook and Price then sought instruction from Superintendent Bill Snodgrass on how to handle the situation.

That evening, Mrs. Frost, fearful of Price's intentions, called the police and requested that they escort her into the school the next morning to witness that her conduct was peaceful and lawful. The next morning, on November 23, 1983, Mrs. Frost went to Sarah's class to remove her daughter from the reading class, and upon being told that a Thanksgiving program had delayed reading period, she went to Price's office. While in Price's outer office, Mrs. Frost again called the Church Hill Police Department to see if a policeman could be sent to witness her peaceful and lawful behavior. Chief of Police Ashbrook came within four minutes. Price asked Ashbrook why he was there, and Mrs. Frost said she called him.

C. Arrest And Jailing Of Mrs. Frost And Compelled Indoctrination Of Sarah

Price ordered Mrs. Frost to leave the school premises, and an indisputably non-volatile, non-disruptive exchange ensued, with Mrs. Frost inquiring why she had to leave, and Price reiterating her order. Price handed Chief of Police Ashbrook Tennessee Code Annotated § 49-818 (recodified § 49-6-2008), and he then read the statute to Mrs. Frost, and told her to leave or be arrested. The statute reads in part:

> Persons improperly on school premises. — (a) In order to maintain the conditions and atmosphere suitable for learning, no person shall enter onto the grounds or into the buildings or public schools during the hours of student instruction *except* students assigned to that school, the staff of the school, *parents of students*, and other persons with lawful and valid business on the school premises. [Emphasis added].

After hearing Chief of Police Ashbrook read the statute, Mrs. Frost said the law did not apply to her because

she was a parent with a student at that school. When Ashbrook again told her to leave or be arrested, Mrs. Frost said she was not leaving her child who was about to be subjected involuntarily to the reading class, and was arrested as she went through the office door into the hall.

Ashbrook quickly placed Mrs. Frost in a squad car and drove her to the Hawkins County Jail, where she was searched, fingerprinted, photographed, and placed in a cell with other prisoners for two hours. After a warrant was drafted by Ashbrook and the judge, she was taken before the same judge, who handwrote the complaint with Ashbrook. The judge released Mrs. Frost on her own recognizance on the condition that she not go on the property of the Hawkins County Public Schools. The police offered her no assistance to return to her unattended vehicle 30 miles away.

Ashbrook testified that the district attorney general had advised the judge, before the judge and Ashbrook collaborated for two hours to draft the complaint, that it was doubtful that Mrs. Frost violated the statute under which she was arrested. Therefore, the judge and Ashbrook searched the Tennessee Code Annotated, and found another statute with which to charge her—Tenn. Code Ann. § 39-3-1204. It is undisputed that immediately below the statute, on the same page of the Tennessee Code Annotated, there is a note saying that the statute was declared unconstitutional in the case of *Baxter* v. *Ellington*, 318 F.Supp. 1079 (E.D.Tenn. 1970). All relevant events occurred in the Eastern District of Tennessee from which the *Baxter* decision had issued.

D. Expulsion Of Frost Children And Malicious Prosecution Of Mrs. Frost

The school officials thereafter expelled the two older Frost children from the entire school curriculum,

although the family only objected to the books used in the reading class. The Frost family then enrolled Sarah and the older two children in Christian private schools, incurring considerable expense.

The district attorney prosecuted Mrs. Frost. She was required to appear in court for an arraignment, at which Mrs. Frost pled not guilty. Mrs. Frost also appeared at a preliminary hearing to determine whether there was probable cause to refer the case to the grand jury. Widespread publicity surrounded the hearing in a packed courtroom, with many school employees present. Those in attendance directed much hostility toward Mrs. Frost.

After a full evidentiary hearing, including testimony by Ashbrook, the same judge who helped draft the complaint, dismissed the charges because of the inapplicability of Tenn. Code Ann. § 49-818 and the unconstitutionality of Tenn. Code Ann. § 39-3-1204.

The arrest, incarceration and prosecution of Mrs. Frost destroyed her impeccable reputation, and she was branded falsely by school officials at public rallies as a rabble rouser, a nuclear plant picketer, one specially schooled in techniques of public school disruption, and a religious fanatic. All of the above humiliated the Frosts and adversely affected her and Sarah's emotional state, their ability to circulate in the community without harrassment, and Mrs. Frost's ability to perform as a mother and a wife.

STATEMENT OF THE PROCEEDINGS

Mrs. Frost filed in a timely fashion this lawsuit under 42 U.S.C. § 1983 for violation of her constitutional rights. After considerable pretrial discovery, the trial by jury commenced in January 1986. The jury returned a general

verdict of $70,000 compensatory damages against Hawkins County Board, and the judgment was entered.

Mrs. Frost filed post-trial motions for judgment of liability against Price, Ashbrook, and Snodgrass notwithstanding the verdict, and a new trial on damages. Mrs. Frost also moved to set aside the directed verdict and judgment of dismissal against Church Hill, for an injunction, and for additur, and for partial new trial on damages against the Hawkins County School Board. Hawkins County School Board moved for judgment notwithstanding the verdict, a new trial, or remittitur. All motions were denied, and notices of appeal were filed by the Hawkins County School Board and Mrs. Frost.

On July 12, 1988, the Sixth Circuit reversed the verdict, and ordered the lower court to grant a motion notwithstanding the verdict on behalf of the school district.

REASONS FOR GRANTING THE PETITION

I. THIS CASE PRESENTS QUESTIONS OF EXTRAORDINARY IMPORT WHICH NEED TO BE SETTLED BY THIS COURT.

A. The Right To Exemption, To Protection From Incarceration, And To Nonexpulsion For Sincere Religious Exercise Is A First Amendment Question Of Extraordinary Import.

This case raises the important constitutional questions whether public schools must exempt students from religiously-objectionable materials if nonexemption is not required by a compelling interest served by the least burdensome means; whether public schools may arrest and jail parents who nondisruptively come onto school grounds to state religious objections, to petition for exemption, and to withdraw their children; and whether public schools may expel children from all courses if they object to one course or text series.

B. The Right To Accommodation Of Sincere Religious Exercise Is A First Amendment Question Of Extraordinary Import.

This case also raises the question whether public schools have the constitutional duty to accommodate the sincere religious objections of the Frosts and similar students and parents by providing educational alternatives whose use would not frustrate a compelling interest. The absence of a threatened compelling interest and of the least burdensome means is evident, because many public school officials accommodate religious-based parental objections to certain learning materials. In sharp contrast, the Hawkins County School District responded with coercion and an unconstitutional condition on a public benefit, claiming that the students must totally leave the entire public school system if they asked for an alternative for any portion of the curriculum. The school district's "calloused indifference"[1] to the parental requests for alternative reading books climaxed at a frightening crescendo, when the principal of Church Hill Elementary School had Vicki Frost arrested, when she requested in a nondisruptive fashion that her daughter be excused from the reading class using the offensive book, and when she sought to teach her daughter reading.[2] The school district

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[1] *Zorach* v. *Clauson*, 343 U.S. 306, 314 (1952).

[2] In the related case, *Mozert* v. *Hawkins County School District*, 647 F.Supp. 1194 (E.D.Tenn. 1986), *rev'd*, 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 108 S.Ct. 1029 (1988), the trial court ruled that allowing the parents to home educate their children in reading under the relevant Tennessee statutes was one "least restrictive" alternative available to promote the state's interest in making sure children are properly educated. The trial court emphatically rejected the notion that the school district could not tolerate any alternative education, and had to expel anyone who refused on grounds of conscience to study from any objectionable book. *See* 647 F.Supp. at 1200-1202.

made no effort whatsoever to accommodate Mrs. Frost's religious beliefs in the instant case.

Although a jury of local residents agreed that Mrs. Frost's rights had been violated and awarded her $70,000 against the school district, despite widespread hostility toward the Frosts, the Sixth Circuit of the Court of Appeals reversed. The Sixth Circuit made the extraordinary claim that Mrs. Frost had no constitutional right violated, simply because she legally could have placed her daughter in a private school:

> Frost's claim that she was deprived of the custody of her child without due process is equally unsupported. Frost had been given notice on November 22, 1983, that she would no longer be permitted to remove Sarah from the regular reading class. Despite this knowledge, *and her unencumbered freedom to transfer Sarah to a private school* (an option which Frost exercised on December 14, 1983), Frost chose to send her daughter back to Church Hill Elementary School and renew her disruption of the school's normal routine. For these reasons, we hold that the district court erred in refusing to grant the Board's motion for judgment notwithstanding the verdict.

851 F.2d at 827 (emphasis added).[3] The "disruption"

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[3] The Sixth Circuit's strange conclusion that the school district could arrest and jail Mrs. Frost because she could have avoided the controversy by enrolling her daughter in a private school, sounds unsettlingly similar to a legal argument firmly rejected by the Supreme Court in the free speech setting. In *Grayned* v. *City of Rockford*, 408 U.S. 104 (1972), the Supreme Court quoted an earlier case to reiterate, "It goes without saying that 'one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.'" 408 U.S. at 119 n.40, quoting *Schneider* v. *State*, 308 U.S. 147, 163 (1939). *See also Consolidated Edison* v. *Public Service Comm'n*, 447 U.S. 530, 541 n. 10 (1980) and *Southeastern Promotions Ltd.* v. *Conrad*, 420 U.S. 546, 556 (1975).

merely consisted of a request for exemption from the reading class without exclusion from public school.

The Sixth Circuit clearly rooted its ruling against Mrs. Frost in the related decision, *Mozert* v. *Hawkins County Bd. of Ed.*, 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 108 S.Ct. 1029 (1988). There, the court ruled that a public school could expel students from all parts of the school day and curriculum, if they had religious objections only to a certain set of reading books, and that the school district had no constitutional duty to accommodate reasonably the religious minority's requests for alternative reading books.

The petitioner, Mrs. Frost, suggests that this Court should grant certiorari in this case, to review the important issues of parental rights and religious freedom in the public school realm.

II. THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH MAJOR DECISIONS OF THIS COURT

A. The Sixth Circuit Ignored The Appropriate Free Exercise Test, Because It Ignored The Requirement For A Compelling State Interest

The Sixth Circuit opinion's analysis clearly clashes with settled precedent of this Court that governmental intrusion on a person's rights under the Free Exercise Clause of the First Amendment can only be justified if they further a compelling state interest, implemented by the least restrictive means. *Thomas* v. *Review Board*, 450 U.S. 707, 718, 719 (1981); *Hobbie* v. *Unemployment Appeals Commission*, 480 U.S. ___, 94 L.Ed.2d 190. 197, 198 (1987).

The Sixth Circuit made no attempt to justify its ruling in light of these precedents, claiming merely that Mrs. Frost "disrupted" the school process (with no citation to

the record), although all evidence presented at trial showed that Mrs. Frost and the principal had a normal, unheated discussion about the situation. The school district never showed that exempting some students would necessarily disrupt school operations. The jury awarded $70,000 to Mrs. Frost against the school district for violation of her constitutional rights. The school district's strong-arm tactics were erroneously affirmed by the Sixth Circuit, without any appropriate application of the "compelling interest" and "least restrictive means" test. No compelling interest is threatened.

B. The Sixth Circuit Contradicted This Court's Decisions On The Constitutional Right To Exemption, When It Denied Exemption To Sarah Frost Without Showing Any Threat From Exemption To A Compelling Interest And Without Showing Why Exemption Is Not The Least Burdensome Means.

Exempting those with religious objections is the normal remedy in Free Exercise Clause cases, if there is a burden on sincere religious beliefs not supported by a compelling state interest performed in the least restrictive means. In this Court's Free Exercise Clause cases, the usual relief granted is to exempt the religious group or individual from some general governmental legal requirement. Some examples of exemption are as follows:

West Virginia State Board of Education v. *Barnette*, 319 U.S. 624 (1943)—Jehovah's Witness exempt from state requirement for flag salute and pledge of allegiance in the public schools.

Sherbert v. *Verner*, 374 U.S. 398 (1963)—sabbatarian exempt from provision of South Carolina unemployment compensation statutory requirement.

Wisconsin v. *Yoder*, 406 U.S. 205 (1972)—Amish exempt from portion of Wisconsin compulsory attendance law.

Wooley v. *Maynard*, 430 U.S. 705 (1977)—Jehovah's Witness exempt from New Hampshire requirement to display "Live Free Or Die" on automobile license plates.

Thomas v. *Review Board*, 450 U.S. 707 (1981)—Jehovah's Witness exempt from provision of Indiana unemployment compensation law.

Jensen v. *Quaring*, 472 U.S. 478 (1985) (aff'd by equally divided Court)—Woman with religious objection to getting her photograph taken is excused from requirement that Nebraska drivers' licenses must bear pictures of the drivers.

Hobbie v. *Unemployment Appeals Commission*, 480 U.S. ____, 94 L.Ed.2d 190 (1987)—Sabbatarian exempt from portion of Florida's unemployment compensation law.

In *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), this Court allowed the Amish to be exempted from a part of the Wisconsin compulsory attendance law, and not attend school after the eighth grade. Therefore, in the public school setting, this Court has said that government officials must allow religious objectors to be exempt from school requirements, unless the government uses the least restrictive means to promote a compelling state interest.

Lower federal courts have also recognized a constitutional right to exemption for those who have religious objections to certain aspects of public school education.[4]

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[4] *E.g.*, *Spence* v. *Bailey*, 465 F.2d 797 (6th Cir. 1972) (religious pacifist exempted from mandatory ROTC class needed to graduate from high school in Memphis); *Moody* v. *Cronin*, 484 F.Supp. 270 (C.D.Ill. 1979) (Pentecostal girls were exempted from mandatory co-ed gym classes because they believed that the gym uniforms were "immodest apparel," and exposed them to the opposite sex in a way

The federal district court in *Mozert* correctly followed that principle, but was reversed by the Sixth Circuit on appeal. 827 F.2d at 1058.

C. The Sixth Circuit Erroneously Contradicted The Unconstitutional Condition Rule, Because It Allowed Public Schools To Compel An Unconscionable Choice Between Other Courses And Exemption From A Religiously Objectionable Course.

This Court has repeatedly ruled that the government cannot force a person to choose between obtaining an important governmental benefit or a religious conviction. To put it another way, the Constitution forbids the government from attaching a condition to receipt of a public benefit that requires a person to violate his religious convictions. In *Thomas* v. *Review Board*, 450 U.S. 707 (1981), this Court said,

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.

450 U.S. at 717-18.

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that violated their religious beliefs); *see also Florey* v. *Sioux Falls School District*, 619 F.2d 1311, 1316-17 (8th Cir. 1980) ("forcing any person to participate in an activity that offends his religious or nonreligious beliefs will generally contravene the Free Exercise Clause"); *Wright* v. *Houston Independent School District*, 366 F.Supp 1208 (S.D.Tex. 1972) (teaching of evolution in public schools does not violate plaintiffs' religious beliefs, because they were allowed to be exempt from those classes).

In *Sherbert* v. *Verner*, 374 U.S. 398 (1963), this Court echoed the principle that government cannot force people to choose between their constitutional rights and a public benefit:

> Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forgo that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Sunday worship.

374 U.S. at 404.

Clearly, public education is a governmental benefit. In *Wisconsin* v. *Yoder*, 406 U.S. 205, 213 (1972) this Court said that "providing public schools ranks at the very apex of the function of a State." The government cannot place conditions on the important benefit of public education which violate a person's religious beliefs, and then escape all constitutional duties for accommodation by saying that the Frosts could have enrolled their children in private schools, or home schooled them.[5]

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[5] This Court rejected a similar argument in *Torcaso* v. *Watkins*, 367 U.S. 488 (1961). In *Torcaso*, this Court said that the government may not require surrender of the opportunity of holding public office for exercise of religious convictions against professing belief in God. The state did not force *Torcaso* to pursue public office, but by condition (the oath) it denied him a benefit (opportunity for government employment). "The fact . . . that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution." *Id.* at 495-96.

Even in the context of private employers, this Court has interpreted Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2000e-17 to impose a duty on employers to reasonably accommodate the religious beliefs and practices of their employees. *Ansonia Board of Education* v. *Philbrook*, 479 U.S. ___, 93 L.Ed.2d 305 (1986); *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977). If a federal statute imposes a duty to make reasonable accommodations of religious beliefs, certainly the U.S. Constitution imposes a parallel duty on government actors.

In this case, the Hawkins County School District made no attempt to accommodate Mrs. Frost's religious beliefs. They had Mrs. Frost arrested, and made no effort to seek out a reasonable accommodation that would have protected the Frosts' religious beliefs, but fulfilled the state's interest in ensuring that children are properly educated (The trial court in *Mozert* found that allowing the parents to home school their children in reading was the least restrictive alternative to fulfill the state's compelling interest. See 647 F.Supp. at 1200-1202.

The school district attached an unconstitutional condition to public education "read all books, no accommodation, or leave the public school system." The Sixth Circuit erred in not requiring the school district to justify its coercive actions by showing that it has a compelling interest implemented by the least restrictive means.

D. The Sixth Circuit Erroneously Ignored Important Precedents Of This Court On The Government's "Duty To Accommodate" Religious Beliefs.

Moreover, this Court has reiterated that government has a "duty to accommodate" religious activities, in the decisions cited *infra*. The Sixth Circuit did not even mention this important constitutional principle in its opinion.

The Hawkins County School District made no attempt whatsoever to accommodate Mrs. Frost's religious beliefs, and refused to allow her to teach her daughter reading in a manner the federal district court found reasonable under state law in the related *Mozert* case.

This Court has oft reaffirmed the government's "duty to accommodate" religious beliefs. In *Lynch* v. *Donnelly*, 465 U.S. 668 (1984), the Supreme Court stated the rule:

> [The First Amendment] affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.

465 U.S. at 673. In *Hobbie* v. *Unemployment Appeals Commission*, 480 U.S. ___, 94 L.Ed.2d 190 (1987), the Supreme Court recently reiterated that concept:

> This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.

94 L.Ed.2d at 200. *Accord*, *Walz* v. *Tax Commission*, 397 U.S. 644 (1970) and *Zorach* v. *Clauson*, 364 U.S. 306 (1952).

The Supreme Court has cautioned officials not to use the Establishment Clause as an excuse to justify mistreatment of religious people. In *McDaniel* v. *Paty*, 435 U.S. 618 (1978), Justice Brennan, in his concurring opinion, said:

> The Establishment Clause, properly understood, is a shield against any attempt by government to inhibit religion as it has done here [citations omitted]. It may not be used as a sword to justify repression of religion or its adherents from any aspect of public life.

435 U.S. at 641. He added:

> The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore, subject to unique disabilities.

Id.

The Sixth Circuit made no attempt to explain why the school district does not have to obey this constitutional mandate to accommodate religious beliefs. This Court should grant certiorari in this case to reaffirm that the "duty to accommodate" religious beliefs applies to public school officials, too.

E. The Sixth Circuit Erroneously Ignored This Court's Landmark Cases On Parental Rights In Education.

This Court has recognized the constitutional power of parents to oversee their childrens' upbringing, including the area of education. In *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), this Court spoke of that case in a way that describes this one:

> . . . this case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nuture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

406 U.S. at 232.

Yoder reaffirmed *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925), and *Meyer* v. *Nebraska*, 262 U.S. 390 (1923). This Court in *Pierce* enunciated the oft-quoted principle of parental oversight of their childrens' upbringing:

> The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

268 U.S. at 535.

The Sixth Circuit's breezy rejection of Mrs. Frost's legal claims made no mention of this important legal principle of parental rights, let alone made any attempt to distinguish this important line of cases. The Sixth Circuit's skewed ruling in favor of unbridled governmental power should be reviewed.

F. The Sixth Circuit Contradicted This Court's Precedent On The Requirement Of Probable Cause Before A Warrantless Arrest.

The Sixth Circuit failed to apply the "clearly erroneous" standard in overruling the factual findings of the triers of fact (the jury) in this case. The Sixth Circuit also erred by not applying the proper standards for constitutional and civil rights claims arising under circumstances of false arrest and false imprisonment. Government officials violate constitutional rights under the Due Process Clause if they arrest a person without probable cause. *See, e.g.*, *Hinshaw* v. *Doffer*, 785 F.2d 1260 (5th Cir. 1986).

In its zeal to make sure that Mrs. Frost lose, the Sixth Circuit turned a blind eye to the following facts:

Mrs. Frost was arrested, jailed, and charged solely for violating two Tennessee trespassing statutes. One had been declared unconstitutional 13 years earlier by the applicable federal judicial district, and the other law (read aloud to Mrs. Frost by the police chief who arrested her) clearly did not apply to parents on public school grounds. The state judge, seeing the weakness of the charges, dismissed both counts against Mrs. Frost.

The Sixth Circuit *did not* reverse on the grounds that the police chief had "probable cause" to arrest Mrs. Frost, nor could there be probable cause to think any law was violated. The Sixth Circuit instead reversed because Mrs. Frost had an "unencumbered freedom to transfer Sarah to a private school," a total nonsequitur. Certainly, the Sixth Circuit cannot carve out a "public school exception" to the general rule against false arrest, saying that public schools may arrest parents without probable cause on school grounds (expressly contrary to the Tennessee statute), for the sole reason that the parents could have placed their children in a private school or have home educated them. While students do not leave their constitutional rights behind at the schoolhouse gate, the Sixth Circuit finds that parents do leave their rights behind once they fail to choose private over public education. Such a mangled reading of the law twists this Court's principles to accomplish the result of ensuring that the conservative Christians lose.

CONCLUSION

For all of the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit in this case.

Date: October 10, 1988

Respectfully submitted,

JORDAN W. LORENCE*
CIMRON CAMPBELL
Concerned Women for America
370 L'Enfant Promenade SW
Suite 800
Washington, D.C. 20024
(202) 488-7000
**Counsel of Record*

WENDELL R. BIRD
Law Offices of Wendell R. Bird
1150 Monarch Plaza
3414 Peachtree Road NE
Atlanta, GA 30326
(404) 264-9400

APPENDIX

APPENDIX

[851 F.2d 822 (6th Cir. 1988)]
Nos. 86-5680/5706

UNITED STATES COURT OF APPEALS

For The Sixth Circuit

VICKIE FROST,
Plaintiff-Appellee, (86-5680),
Plaintiff-Appellant, (86-5706),

v.

HAWKINS COUNTY BOARD OF EDUCATION,
Defendant-Appellant, (86-5680),

JEAN PRICE, personally and in her official capacity as an employee and agent of Hawkins County Board of Education serving as principal of Church Hill Elementary School, Church Hill, Tennessee; JOE ASHBROOK, personally and in his official capacity as an employee and agent of the City of Church Hill, Tennessee serving as Chief of Police; HAWKINS COUNTY BOARD OF EDUCATION, a sub-division of the government of Hawkins County; BILL SNODGRASS, Superintendent of the Board of Education in Hawkins County,
Defendants-Appellees, (86-5706).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE.

Decided and Filed July 12, 1988

[851 F.2d 823] Before: MARTIN, JONES and WELLFORD, Circuit Judges.

JONES, Circuit Judge. In this civil rights action alleging prior restraint, false imprisonment and malicious prosecution, defendant Hawkins County Board of Education appeals the jury verdict for plaintiff-appellant Vickie Frost. Frost appeals the denial of certain pretrial and postjudgment orders. Upon consideration, we find that there is no basis for judgment against the defendant. Thus, we hereby reverse the district court's decision and grant a judgment notwithstanding the verdict for the Hawkins County School Board. We also affirm the district court's grant of a directed verdict in favor of the City of Church Hill and the jury's verdicts in favor of defendants Ashbrook, Price and Snodgrass.

I.

On November 20, 1984, pursuant to 42 U.S.C. Section 1983, plaintiff Vicki Frost, a parent with three children in the Hawkins County School System, sued the Hawkins County Board of Education ("the Board"); Bill Snodgrass, Superintendent of Hawkins County Schools; Jean Price, Principal of Church Hill Elementary School; Joe Ashbrook, Chief of Police for Church Hill, Tennessee; and the City of Church Hill, an incorporated municipality. In her suit, Frost alleged violations of her constitutional rights under the first and fourteenth amendments.

To a large extent, the instant case arises out of the same factual circumstances as *Mozert* v. *Hawkins County Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 108 S. Ct. 1029 (1988). The controversy in both cases began in September 1983, when a group of "born-again" Christian parents expressed their disapproval of a new series of Holt, Rinehart & Winston reading books.[1] These [851 F.2d 824] parents objected

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[1] Pursuant to Tenn. Code Ann. § 49-6-2207 (1983) ("T.C.A."), the books were approved by Tennessee's textbook commission and selected by a committee of Hawkins County teachers for use in grades kindergarten through eight. In relevant part, the statute

to the books because they considered the values which the books seem to endorse (i.e., secular humanism, evolution, and non-Christian religions) to be repugnant to their beliefs. To inform the School Board and the general public of their views, the parents joined to form an organization called Citizens Organized for Better Schools. Frost was particularly active in this organization, giving interviews to several newspaper, television and radio reporters in addition to speaking at meetings of the Hawkins County Board of Education.

In an effort to accommodate offended parents, the School Board allowed Church Hill Middle School students who were offended by the new textbooks to be taught from an older reading series. Two of Frost's three children attended the Middle School and were given reading lessons from the older books.

Frost's third child, Sarah, a second grade student at Church Hill Elementary School, was unaffected by the Board's com-

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states the following:

> (a) The local boards of education are hereby authorized and required to adopt textbooks to be used in the public schools of their school districts, from the list of textbooks listed for adoption by the state textbook commission, the adoption to be for a period of not less than three (3) years, and not more than five (5) years, in accordance with state contracts.
>
> . . . .
>
> (c)(1) Boards of education shall make their adoption upon recommendations of committees, these committees to be set up by subject matter fields and composed of three (3) or five (5) teachers, or supervisors and teachers, the number depending upon the relative size of the local school system.
>
> (2) These committees shall be composed of teachers and supervisors who are now teaching or supervising the respective subject and shall be by grade or groups of grades arranged so that a committee may consider an entire series of books if it should so desire, provided in all cases, that the teachers appointed on the committees herein provided for shall hold professional certificates and shall have had three (3) or more years of experience as teachers or supervisors in the public schools.

promise. Thus, Frost sought permission from Church Hill Elementary school principal, Jean Price, to allow Frost to teach Sarah reading. After learning that Frost wanted to give Sarah her lesson while Sarah's classmates were being taught how to read by their regular teacher, Price told Frost that oral reading and comprehension were graded separately and that Sarah would receive a failing grade in oral reading if she did not read from the approved textbook. She also told Frost that Sarah's repeated absences from reading class would be reported to the Hawkins County attendance supervisor. Despite these warnings, each day Frost would go to Sarah's school, remove her from her classroom before the regular reading lesson began, take her to the school's library or cafeteria and give her a reading lesson from an older reading textbook. At the end of the lesson, Frost would take Sarah back to her classroom for instruction in the other subjects.

The Board countenanced both Frost's teaching of Sarah and the use of older reading textbooks to teach some students in the Church Hill Middle School until November 10, 1983, when the Board passed a resolution requiring all students in Hawkins County to use only those textbooks which were currently approved by the Board. As a result of the resolution, it became clear that the Board would no longer compromise with parents who objected to the use of the Board-approved textbooks. Consequently, seven families—14 parents and 17 school children—brought suit on December 3, 1987, to challenge the resolution. They sought injunctive relief and money damages for alleged violation of their first amendment right to freely exercise their religion. The case, to which Frost was a party, was *Mozert*, 827 F.2d 1058. Although the plaintiffs won in district court, a panel of this court reversed and held that the requirement that public school students study a basic reader series chosen by school authorities did not create an unconstitutional burden under the free exercise clause. Thereafter, the Supreme Court denied the plaintiffs' petition for certiorari.

With regard to the instant action, following the November 10, 1983 resolution, Price told Frost that her daily practice of

taking Sarah from reading class was not only unwise but in violation of Board policy. Having stated this, Price refused to continue to let Frost use the school's facilities or grounds to teach Sarah. Rather than discontinuing her lessons, however, Frost took Sarah to the school's parking lot and attempted to give Sarah her reading lesson in the family car. Price consulted with Bill Snodgrass, the Superintendent of Schools, on whether Frost's conduct violated the Board's policy. Snodgrass told Price to call the police and get them to stop Frost's practice of removing Sarah from class to teach her how to read. On November 22, 1983, Church Hill Police Chief Joe Ashbrook came to the school at Price's request [851 F.2d 825] and asked Frost to leave. She left and Sarah rejoined her class.

The next day, November 23, 1983, following the advice of counsel, Frost attempted to resume her practive of removing Sarah from class. However, when she arrived at Sarah's school, Price again stopped her. Price restated the Board's policy and a sharp dispute ensued. This time Frost called the police. Again, Police Chief Ashbrook came to the school. After some discussion, Chief Ashbrook read Frost the Tennessee code section regarding persons improperly on school premises (Tenn. Code Ann. Section 49-818 ("T.C.A."), recodified as T.C.A. Section 49-6-2008 (1983)).[2] He then told Frost that, pursuant to that code section, she had a right to be on school premises only so long as she had lawful and valid business. He told her that since

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[2] T.C.A. 49-6-2008 (1983), Persons improperly on school premises, provides as follows:—(1) In order to maintain the conditions and atmosphere suitable for learning, no person shall enter onto the grounds or into the buildings of public schools during the hours of student instruction except students assigned to that school, the staff of the school, parents of students, and other persons with lawful and valid business on the school premises.

(b) Any person improperly on the premises of a school shall depart on the request of the school principal or other authorized person.

(c) Violation of this section shall be a misdemeanor and punished as such. [Acts 1981, ch. 386, § 1; T.C.A. § 49-818.]

the school's principal had told her that she no longer had valid business on the premises, she would have to leave. When Frost refused, Chief Ashbrook arrested her and took her to jail. After conferring with a General Sessions Court Judge and the District Attorney General, Chief Ashbrook executed an affidavit of complaint charging Frost with violations of T.C.A. § 49-818, and another code section, T.C.A. § 39-3-1204,[3] regarding trespass on school grounds. Frost remained in jail for about three hours.

Frost's arrest received widespread local and some national media attention. Upon her release from jail she gave several press interviews. On December 14, 1983, she removed Sarah and her other children from the Hawkins County Schools and placed them in a private Christian school (where they were in attendance at the time of this appeal).

On November 20, 1984, almost a year after her arrest, Frost filed the instant suit. In her complaint, Frost alleged that defendants restrained the expression of her ideas on the advisability of using the new reading texts, denied her the physical custody of her daughter without due process, sup-

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[3] T.C.A. 39-3-1204 (1983), Trespass on campus, buildings or facilities of school or university, provides as follows:—(a) Any person who enters the campus, buildings, or facilities of a junior college, state university, or public school and is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful, or efficient conduct of the activities of such campus or facility may be directed by the chief administrative officer, or employee designated by him to maintain order on such campus or facility, to leave such campus, buildings, or facilities.

(b) If such person fails to do so, he shall be guilty of trespass, and upon conviction shall be deemed guilty of, and punished as for, a misdemeanor as provided in § 39-1202. [Acts 1969, ch. 257, § 1; T.C.A., § 39-1215.]

In *Baxter* v. *Ellington*, 318 F. Supp. 1079 (E.D. Tenn. 1970), the court held that T.C.A. 39-3-1204 was invalid because its language was vague and overbroad.

pressed her right to speak symbolically, falsely arrested her, falsely imprisoned her and maliciously prosecuted her. She sought compensatory damages, punitive damages and consequential damages of $100,000 against each defendant, and asked that the Board be enjoined from depriving her of custody of her children, from seeking to have her arrested while on school premises, and from conspiring and assisting in attempts to impose prior restraint on expression of her criticism of the Board and its policies. In essence, Frost claimed she was denied her first and fourteenth amendment rights. Defendants Hawkins County Board of Education and the City of Church Hill denied all liability, and the individual defendants claimed good faith immunity.

Frost set out her claims in pre-trial order entered July 12, 1985. On July 24, 1985, she requested to amend the order to add claims for libel, slander, and def[851 F.2d 826]amation. The district court correctly declined to exercise pendent jurisdiction over those state claims because Frost delayed in asserting them and because the district court believed that their inclusion would confuse the jury and unnecessarily complicate and prolong the action.

At various other times, Frost tried to amend the pre-trial order, move for a continuance or for a mistrial. All attempts failed and the case went to trial. When the evidence was completed, the court directed a verdict for the City of Church Hill and dismissed the punitive damages claim against the Board. At that time, Frost's final motion for mistrial before the district court was denied. The remaining defendants were the Board, Snodgrass, Ashbrook and Price.

The jury received the case on March 27, 1985. It returned a verdict that Frost's civil rights were violated and that she was entitled to punitive damages of $10,000 against Snodgrass and $10,000 against Price. The jury also found that Frost was entitled to $50,000 in compensatory damages from the Board. The court then told the jury that its verdict was inconsistent since punitive damages could not be awarded against a defend-

ant without first awarding compensatory damages. After further deliberation, the jury awarded $70,000 in compensatory damages against the Board alone. This became the district court's judgment.

The Board then sought a judgment notwithstanding the verdict, a new trial, or a remittitur. Frost, for her part, filed several post-trial motions seeking an additur, injunctive relief, judgments notwithstanding the verdicts and/or new trials as to defendants Price, Ashbrook and Snodgrass. She also sought a new trial against the City of Church Hill.

These motions, which the trial court denied, are now the issues on appeal.

II.

In evaluating whether the district court erred in denying the Board's motion for judgment notwithstanding the verdict and whether the district court properly directed the verdict in favor of the City of Church Hill, our standard of review is whether there was sufficient evidence to raise a material question of fact for the jury. *O'Neill* v. *Kiledjian* 511 F.2d 511, 513 (6th Cir. 1975). This determination is one of law to be made by the trial court initially. *Id.*

> In determining whether the evidence is sufficient, the trial court may neither weigh the evidence, pass on the credibility of witnesses nor substitute its judgment for that of the jury. Rather, the evidence must be viewed in the light most favorable to the party against whom the motion is made, drawing from that evidence all reasonable inferences in his favor. If, after thus viewing the evidence, the trial court is of the opinion that it points so strongly in favor of the movant that reasonable minds could not come to a different conclusion, then the motion should be granted.

Morelock v. *NCR Corp.*, 586 F.2d 1096, 1104-05 (6th Cir. 1978), *cert. denied*, 441 U.S. 906 (1979) (citations omitted). As an appellate court we apply the same standard. *Id.*

III.

The dispositive issue in this case, as in any section 1983 case, is whether Frost was deprived of any federal right. In assessing this, we look to section 1983, on which all of plaintiff's claims are based. Section 1983, in relevant part, provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983 (1982).

We think Frost's claims that she was deprived of her freedom to express her opposition to the Board's policy and that [851 F.2d 827] she was deprived of the custody of her child without due process are without merit. There is no evidence that the Board prevented Frost from voicing her opposition to the Board's policy at School Board meetings, or to the media or to whomsoever Frost pleased. For example, Frost was never ejected or barred from Board meetings, and the Board never retaliated against her for her outspoken criticisms of it. Frost's claim that she was deprived of the custody of her child without due process is equally unsupported. Frost had been given notice on November 22, 1983, that she would no longer be permitted to remove Sarah from the regular reading class. Despite this knowledge, and her unencumbered freedom to transfer Sarah to a private school (an option which Frost exercised on December 14, 1983), Frost chose to send her daughter back to Church Hill Elementary School and renew her disruption of the school's normal routine. For these reasons, we hold that the district court erred in refusing to grant the Board's motion for judgment notwithstanding the verdict. We come to this conclusion after viewing the evidence in the light most favorable to Frost, and giving her the benefit of all reasonable

inferences. The evidence, nevertheless, points so strongly in favor of the Board that we think reasonable minds could not come to a different conclusion.

Pursuant to the same standard of review, we evaluate the district court's directed verdict in favor of the City. The basis of Frost's claims against the City is that Ashbrook arrested Frost without probable cause. The jury decided that Ashbrook, by arresting Frost, did not violate Frost's constitutional rights, thereby implicitly suggesting that Ashbrook had probable cause to arrest Frost. Since a jury's findings that a police officer inflicted no constitutional injury on a plaintiff is conclusive not only as to the officer's liability, but also as to the liability of the city and its police commission. *City of Los Angeles* v. *Heller*, 475 U.S. 796, 106 S.Ct. 1571, 1573 (1986), we affirm the district court's directed verdict in favor of the City of Church Hill. While Frost may have a state claim against Ashbrook based on her arrest, this is a question of state law and we express no opinion as to its validity.

Finally, we address Frost's claims against defendants Ashbrook, Price and Snodgrass. Frost sues these defendants in both their official and personal capacities.[4] In *Brandon* v. *Holt*, 469 U.S. 464, 471, 105 S.Ct. 873, 878 (1985), the Court notes that official capacity claims are essentially claims against the entity itself. Thus, our basis for rejecting Frost's claims against the Board and the City—i.e., because Frost suffered no constitutional deprivation—also forms the basis of our rejection of Frost's claims against Ashbrook, Price and Snodgrass in their official capacities. *See e.g.*, *Monroe* v. *Pape*, 365 U.S. 167 (1961). Similarly, we find that Frost's personal capacity claims against these defendants fail because Frost suffered no constitutional deprivation. Accordingly, we do not disturb the jury's verdicts as to these defendants.

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[4] Personal capacity actions (which are sometimes referred to as individual-capacity actions) and official capacity actions are both permissible under section 1983. *Kentucky* v. *Graham*, 473 U.S. 159, 105 S.Ct. 3099 (1985).

IV.

Since we have decided that Frost suffered no constitutional deprivation, her claims under section 1983 cannot succeed. However, even if Frost had suffered a constitutional deprivation, her section 1983 claim against the City, the Board and defendants in their official capacities would, nevertheless, fail because the alleged deprivations were not proximately caused by a custom or policy of the City or the Board. *Monell* v. *New York City Dept. of Social Services*, 436 U.S. 658 (1978).

Under *Monell*, local government entites, such as municipalities and school boards, are liable for civil rights violations if those violations result from the implementation of their official policy or are due to a [851 F.2d 828] governmental "custom." Municipal liability can be found for constitutional deprivations due to governmental "custom" even though that custom has not received formal approval through the government's official decision-making channels.[5] *Monell*, 436 U.S. at 690-91. In the instant case, we find no evidence of an offensive custom. Accordingly, in order for Frost to recover on her claim, her supposed constitutional deprivation must have been proximately caused by an official policy of either the City or the Board.

The Supreme Court has defined policy. In *Pembaur* v. *City of Cincinnati*, 475 U.S. 469, 480-81 (1986), the Court said official policy "often refers to formal rules or understandings—often but not always committed to writing—that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time." Most recently in

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[5] As Mr. Justice Harlan, writing for the Court, said in *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 167-68 (1970): "Congress included customs and usages [in § 1983] because of the persistent and widespread discriminatory practices of state officials . . . Although not authorized by written law, such practices of state officials could well be so permanent and well settled as to constitute a 'custom or usage' with the force of law."

City of St. Louis v. *Praprotnik*, 108 S. Ct. 915 (1988), the Court revisited this issue and in restating *Pembaur's* guiding principles stated:

> First, a majority of the Court [in *Pembaur*] agreed that municipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, "that is, acts which the municipality has officially sanctioned or ordered." Second, only those municipal officials who have "final policymaking authority" may by their actions subject the government to § 1983 liability. Third, whether a particular official has "final policymaking authority" is a question of *state law*. Fourth, the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in *that area* of the city's business.

Praprotnik, 108 S. Ct. at 924 (citations omitted) (emphasis in original).

In light of these principles, we evaluate the only relevant policy in the record (with regard to the Board) i.e., the Board's November 10, 1983 resolution which required all Hawkins County students to use only those textbooks which the Board had currently approved. A review of the Board's policy along with a review of the way it was promulgated and implemented, reveals no evidence that this policy was a proximate cause of any of Frost's claimed deprivations. Additionally, we think the Board's policy was in pursuance of a legitimate Board interest: the uniform instruction of Hawkins County's 8,000 students. And of course, this very policy was upheld against constitutional attack in *Mozert*.

With regard to Frost's claim against the City, even if Frost's arrest had constituted a constitutional deprivation, we would not hold the violation to be pursuant to an official policy of the City. While we recognize that the Court in *Pembaur* held that municipal liability can be established on the basis of a single decision of one of its employees, we do not think that this is the case here. As the *Pembaur* court stated:

> Municipal liability attaches only where the decision-maker possesses final authority to establish municipal policy with

> respect to the action ordered. The fact that a particular official—even a policymaking official—has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion.

Pembaur, 106 S.Ct. at 1299 (footnotes omitted). Because there is no evidence that Ashbrook possessed any final authority to establish municipal policy, Frost fails to meet this standard. The record establishes that in the City of Church Hill only the Mayor and the Board of Aldermen could determine Police Department policy. In fact, an examination of the trial testimony of the Mayor and the City Clerk, as well as the City's official minutes, makes it very [851 F.2d 829] difficult to see how the City participated in the incident that precipitated this lawsuit.

As for Frost's personal capacity suits against Ashbrook, Price and Snodgrass, we believe that even if a federal right had been violated, defendants would have had available to them the defense of qualified immunity.[6] In *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), the Court held that, in general, executive officials are entitled to qualified or good-faith immunity so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known. *Id.* at 815-19. Neither Snodgrass nor Price, by enforcing Board policy, nor Ashbrook, by arresting Frost, violated any clearly established statutory or constitutional right of which a reasonable person should have known. *See Harlow*, 457 U.S. at 815.

For the above stated reasons, we AFFIRM the district court's grant of a directed verdict in favor of the City of Church Hill, REVERSE the district court's judgment against the Board and grant a judgment notwithstanding the verdict in favor of the Board. Because the nonexistence of a federal

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[6] To defeat official capacity claims, the defenses available are only those "immunities [which] . . . are forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment." *Kentucky* v. *Graham*, 473 U.S. at 167.

violation is dispositive of the issues before the court, we find it unnecessary to discuss Frost's post-trial motions for additur, injunctive relief, and a new trial as to defendant's Price, Ashbrook, Snodgrass and the City of Church Hill.

United States District Court
Eastern District Of Tennessee

Case Number: CIV-2-84-453

VICKIE FROST,

Plaintiff,

v.

JEAN PRICE, JOE ASHBROOK,
HAWKINS COUNTY BOARD OF EDUCATION
BILL B. SNODGRASS,

Defendants.

JUDGMENT IN A CIVIL CASE

☒ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ Decision by Court. This action came to a trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Plaintiff Vickie Frost's constitutional rights were violated, and award the plaintiff Vickie Frost compensatory damages in the amount of seventy thousand dollars ($70,000.00) and tax these damages against the defendant Hawkins County Board of Education.

March 27, 1986
Date

KARL D. SAULPAW, JR.
Clerk
/s/DIXIE J. BLAKE
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

CIV-2-84-453

VICKIE FROST,

v.

BILL SNODGRASS, JEAN PRICE,
HAWKINS COUNTY BOARD OF EDUCATION,
and JOE ASHBROOK,

FILED March 27, 1988

VERDICT FORM

We, the jury, unanimously find as follows:

1. Vickie Frost's constitutional rights were violated.

[If you answered "were not," skip the rest of the questions but sign the verdict form.]

2. We fix plaintiff Frost's compensatory damages at $70,000.00 and tax these damages against the following defendants: Hawkins County Board of Education

3. This _____ an appropriate case for an award of punitive damages.

[If you answered "is not" to question 3, skip the next question but sign the verdict form.]

4. We hold the following defendants liable for punitive damages in the amounts indicated:

name of defendant	amount of liability

[Remember that only individual defendants—not the Board of Educatioon—may be held liable for punitive damages. Also you may not award punitive damages against an individual unless you also held him liable for compensatory damages in question 2.]

/s/RICHARD EARLY
Foreperson

DATE 3-27-86

First Amendment to the United States Constitution

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment to the United States Constitution

> . . . Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Tennessee Code Annotated 49-6-2008

> Persons improperly on school premises.—(a) In order to maintain the conditions and atmosphere suitable for learning, no person shall enter onto the grounds or into the buildings of public schools during the hours of student instruction except students assigned to that school, the staff of the school, parents of students, and other persons with lawful and valid business on the school premises.
>
> (b) Any person improperly on the premises of a school shall depart on the request of the school principal or other authorized person.
>
> (c) Violation of this section shall be a misdemeanor and punished as such. [Acts 1981, ch. 368, § 1; T.C.A., § 49-818.]

Tennessee Code Annotated 39-3-1204

Trespass on campus, buildings or facilities of school or university.—(a) Any person who enters the campus, buildings, or facilities of a junior college, state university, or public school and is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful, or efficient conduct of the activities of such campus or facility may be directed by the chief administrative officer, or employee designated by him to maintain order on such campus of facility, to leave such campus, buildings, or facilities.

(b) If such person fails to do so, he shall be guilty of trespass, and upon conviction shall be deemed guilty of, and punished as for, a misdemeanor as provided in § 39-1-202. [Acts 1969, ch. 257, § 1; T.C.A., § 39-1215.]